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What Happens if SCHIP Is Not "Reauthorized"?

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Summary

The Balanced Budget Act of 1997 created the State Children's Health Insurance Program (SCHIP) and provided nearly $40 billion in appropriations over the 10-year period FY1998 to FY2007. Legislative action would be necessary to provide new funds for SCHIP for FY2008 and beyond, but SCHIP's statutory provisions do not need to be reauthorized as they will remain on the books unless Congress expressly repeals the current law. In the absence of an FY2008 SCHIP allotment, states with unexpended FY2006 and FY2007 federal SCHIP balances could continue to operate their programs with those funds in FY2008. Fourteen states and the District of Columbia are projected to be able to cover all of their federal FY2008 SCHIP spending even without an FY2008 SCHIP allotment. Among the 36 states projected to exhaust their federal SCHIP funds in FY2008, some may be able to access Medicaid funding, though at a reduced matching rate compared to SCHIP. However, 13 states would be in shortfall immediately, entering FY2008 with no prior-year SCHIP balances. An amount equal to approximately 18 days of these states' federal SCHIP expenditures is projected to be available from the redistribution of unspent FY2005 allotments. This report may be updated in December 2007 with states' more recent projections.

The Balanced Budget Act of 1997 created the State Children's Health Insurance Program (SCHIP), a direct spending program, and appropriated approximately $40 billion from FY1998 to FY2007. SCHIP needs to be "reauthorized" in the sense that Congress must take legislative action if it wishes to provide the program with new FY2008 funding. However, the statutory provisions governing SCHIP do not need to be reauthorized, as they do not expire or sunset as of the end of FY2007, and so would remain on the books. Legislation has passed both the House (H.R. 3162) and Senate (S. 1893/H.R. 976), described in other CRS reports, that would provide federal SCHIP appropriations at least through FY2012.

Even if Congress does not appropriate funds for SCHIP for FY2008, legal authority for the program provisions would continue in effect, unless Congress were expressly to repeal the current law. Thus, states would have access to some (though, in some cases, very limited) federal SCHIP funds in FY2008. This is because (1) federal SCHIP allotments are currently available to states for three years, and (2) any allotments unspent after three years are available for redistribution to other states. Thus, under current law, states will continue to have access to any unspent FY2006 and FY2007 SCHIP allotments they might have; in addition, any unspent FY2005 allotments will be available for redistribution to other states.

FY2006 and FY2007 Allotments Available in FY2008. According to current-law projections from the Centers for Medicare and Medicaid Services (CMS), based on states' August 2007 estimates of SCHIP spending in FY2007 and FY2008, 36 states would exhaust all federal SCHIP funds at some point in FY2008 without a new appropriation (that is, those states showing shortfalls in the last column of **Table 1**). Comparing these states' available FY2008 funding to their projected spending, their shortfall of federal SCHIP funds would total $4.66 billion.

The District of Columbia and 14 states — Colorado, Connecticut, Delaware, Florida, Idaho, Indiana, Nevada, New Hampshire, New York, Tennessee, Texas, Vermont, Washington and Wyoming — are projected to have enough federal SCHIP funds to last the entirety of FY2008 (states with amounts in Column D of **Table 1**).

Of the 36 states that would experience a shortfall of federal SCHIP funds in FY2008, 13 (Alaska, Georgia, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Nebraska, New Jersey, Rhode Island, and Wisconsin) would face shortfalls immediately in FY2008, which begins October 1, 2007. Their immediate shortfall would result because these states are projected to exhaust all of their federal SCHIP allotments in *FY2007*[1] and therefore have no prior-year balances in FY2008. Four other states — California, Missouri, North Carolina, and North Dakota — are projected to have so little in prior-year balances that they would also likely exhaust their federal SCHIP funds in October 2007.

Redistributed FY2005 Allotments Available in FY2008. At the end of FY2007, states' FY2005 allotments will have been available for three years, with the unspent amounts available for redistribution to other states in FY2008. Current projections indicate that four states will have unspent FY2005 funds at the end of FY2007 totaling $108 million.[2] It is unlikely these funds will be available on October 1, 2007. The redistribution of FY2005 funds will likely occur once final expenditure reports are filed. In recent years, CMS has given states until November 30 to submit expenditure reports for the previous fiscal year. However, CMS could require states to file those reports earlier in order to redistribute the FY2005 funds sooner. CMS is not required to give states a minimum amount of time to file those reports.

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[1] States exhausting their federal SCHIP funds in FY2007 will receive appropriations to cover their FY2007 shortfalls. The appropriation (not to exceed $650 million) was enacted on May 25, 2007, as part of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 (P.L. 110-28).

[2] Based on states' August 2007 projections of expenditures, states forgoing unspent FY2005 funds would be Connecticut ($0.7 million), Tennessee ($33.4 million), Texas ($56.8 million), and Washington ($17.2 million).

Current law permits the Secretary of Health and Human Services (HHS) to redistribute the unspent funds among states that had exhausted the FY2005 allotment using "an appropriate procedure."[3] In previous years in which the Secretary had this flexibility and states faced shortfalls, the Secretary redistributed unspent funds first to shortfall states.[4] For FY2007, the Secretary was required to redistribute FY2004 funds to shortfall states "in the order in which states realize funding shortfalls."[5] If, for example, the Secretary redistributed the currently projected $108 million in unspent FY2005 funds proportionally among the 13 states with no other federal SCHIP funds, the funds could cover approximately 18 days of their projected FY2008 SCHIP spending.

Medicaid Fallback Financing for Certain States. When states exhaust their federal SCHIP funds, some have the ability to draw down federal Medicaid funds as a fallback option. This can occur in one of two ways.

First, states that have an SCHIP-financed expansion of Medicaid may access federal Medicaid funds at the regular Medicaid matching rate, although this match rate is lower than the SCHIP matching rate.[6] States that have an SCHIP program entirely separate from Medicaid cannot revert to Medicaid funds when their SCHIP funds are exhausted, except as discussed below. **Table 1** shows whether a state's SCHIP program is a Medicaid expansion (M), is separate from Medicaid (S), or both (C, for combination). Most SCHIP enrollees are in a separate SCHIP program,[7] although historical analyses have shown that "states that were projected to have shortfalls [in FY2005, FY2006, or FY2007] ... were more likely to have a Medicaid component to their SCHIP program."[8]

In general, Section 1115 of the Social Security Act provides the Secretary with broad authority to waive certain statutory requirements in Medicaid and/or SCHIP. Some states have approval under Section 1115 waiver authority, in the event of a shortfall, to draw federal Medicaid funds for the portion of their SCHIP program that is *not* a Medicaid expansion. Arizona, Hawaii, Massachusetts, Oregon, and Rhode Island are known to have such provisions in their approved waivers.

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[3] § 2104(f) of the Social Security Act.

[4] This was the Secretary's approach for the redistribution of unspent FY2002 funds in FY2005 and the redistribution of unspent FY2003 funds in FY2006. In all other redistributions, Congress prescribed the way in which the funds would be redistributed.

[5] § 2104(h)(1)(C) of the Social Security Act, as added by the National Institutes of Health Reform Act of 2006 (NIHRA, P.L. 109-482, enacted on January 15, 2007).

[6] The federal government matching rate for Medicaid expenditures — the Medicaid federal medical assistance percentage (FMAP) — ranges across states from 50% to 75.89% in FY2007. The enhanced SCHIP FMAP ranges from 65% to 83.12%. The difference between the percentages results from the states' share of expenditures being 30% smaller in SCHIP compared to Medicaid.

[7] See Table 1 of CRS Report RL30473, *State Children's Health Insurance Program (SCHIP): A Brief Overview*, by Elicia J. Herz and Chris L. Peterson.

[8] Kathryn G. Allen, "Children's Health Insurance: States' SCHIP Enrollment and Spending Experiences and Considerations for Reauthorization," Government Accountability Office, statement before the House Energy and Commerce Subcommittee on Health, March 1, 2007, p. 32, at [http://www.gao.gov/new.items/d07558t.pdf].

Federal Requirements Before Terminating SCHIP

There are laws and regulations that pertain to states' ability to terminate SCHIP-financed coverage. None specifically mentions doing so as a result of the absence of a federal allotment for a given fiscal year. HHS may issue guidance for states terminating coverage because of the absence of federal funding, although nothing prohibits states from continuing to operate their SCHIP programs at 100% state cost, with the opportunity to receive a federal match from future SCHIP funds.[9] This section briefly discusses some of the pertinent laws and regulations for states terminating individuals' SCHIP-financed coverage, which vary for Medicaid-expansion programs (in which case Medicaid limitations apply, based on Title XIX of the Social Security Act) and separate-SCHIP programs (in which case SCHIP limitations apply, based on Title XXI).

Separate SCHIP Programs. Under Title XXI, "An approved [SCHIP program] shall continue in effect unless and until the State amends the plan," with such an amendment contingent on approval by the Secretary.[10] Thus, even in the absence of any federal SCHIP funding, a state would ultimately need to submit a State Plan Amendment (SPA) to terminate coverage in its separate SCHIP program.

The law states that "[a]ny plan amendment that eliminates or restricts eligibility or benefits under the plan may not take effect unless the State certifies that it has provided prior public notice of the change, in a form and manner provided under applicable State law."[11] Federal regulations also require that if "eligibility is denied, suspended or terminated," a state "must provide enrollees and applicants timely written notice."[12] In addition, if eligibility is suspended or terminated, the state must provide "sufficient notice to enable the child's parent or caretaker to take any appropriate actions that may be required to allow coverage to continue without interruption."[13] Neither federal statute nor regulation appears to provide a specific length of time.

Having met these requirements, the state may terminate individuals' eligibility without prior Secretary approval, as long as the SPA is transmitted to the Secretary within 60 days of the state having implemented the policy.[14] A SPA is considered approved unless the Secretary notifies the state in writing within 90 days after receiving the SPA that it is disapproved (and the reasons for disapproval) or that specified additional information is needed.[15]

Medicaid-Expansion SCHIP Programs. Under Title XIX, the effective date of a SPA that terminates or suspends coverage to an enrollment group, such as SCHIP-

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[9] States may receive federal reimbursement for SCHIP claims even if the expenditures were incurred before a particular SCHIP allotment was available (42 CFR § 457.614(a)).

[10] § 2106(e).

[11] § 2106(b)(3)(B)(i).

[12] 42 CFR § 457.340(e)(2) and 42 CFR § 457.1180.

[13] 42 CFR § 457.340(e)(2).

[14] § 2106(b)(3)(B)(ii).

[15] § 2106(c)(2).

financed enrollees, "may be a date requested by the State if CMS approves it."[16] Enrollees must receive "timely and adequate notice of proposed action to terminate, discontinue, or suspend their eligibility."[17] Again, there appears to be no specific length of time required.

Assumptions Required for Budget Purposes

Under current law, SCHIP has no federal appropriations for FY2008 onward. However, for budget enforcement purposes, funding for SCHIP through FY2012 will remain in the baseline budget projections and the budget resolution (S.Con.Res. 21, H.Rept. 110-153) at least until the end of 2007. In developing its baseline budget projections, the Congressional Budget Office is required to assume that the program continues at the last-appropriated level, which is currently approximately $5 billion in FY2007. The FY2008 budget resolution also assumed the continuation of the program at the FY2007 level. Therefore, at least until the end of 2007, legislation providing that level of funding for each year covering FY2008-FY2012 ($25 billion over the period) presumably would not be subject to points of order under PAYGO rules or rules enforcing the levels associated with the budget resolution.

Table 1. Projected FY2008 Federal SCHIP Financing Under Current Law (Without FY2008 Allotment), in Millions of Dollars

State	Projected balances of unspent FY2006 and FY2007 allotments available in FY2008	States' projected FY2008 federal SCHIP spending (provided in August 2007)	Projected unspent balances at the end of FY2008	Projected shortfalls at the end of FY2008
A	B	C	D = B - C, if any	E = C - B, if any
Alabama (S)	$44.75	$112.55		$67.79
Alaska (M)		$23.01		$23.01
Arizona (S)	$35.50	$138.44		$102.95
Arkansas (C)	$53.00	$117.19		$64.19
California (C)	$94.61	$1,226.26		$1,131.65
Colorado (S)	$102.43	$70.69	$31.75	
Connecticut (S)	$74.43	$35.67	$38.75	
Delaware (C)	$17.31	$10.18	$7.13	
DC (M)	$18.05	$9.57	$8.48	
Florida (C)	$448.59	$259.74	$188.85	
Georgia (S)		$370.42		$370.42
Hawaii (M)	$13.87	$19.93		$6.06
Idaho (C)	$36.78	$31.11	$5.67	
Illinois (C)		$465.15		$465.15
Indiana (C)	$118.38	$98.75	$19.63	
Iowa (C)		$69.17		$69.17
Kansas (S)	$18.44	$51.42		$32.99
Kentucky (C)	$65.26	$83.03		$17.77

[16] 42 CFR 430.20(b)(3).

[17] 42 CFR 435.919(a).

State	Projected balances of unspent FY2006 and FY2007 allotments available in FY2008	States' projected FY2008 federal SCHIP spending (provided in August 2007)	Projected unspent balances at the end of FY2008	Projected shortfalls at the end of FY2008
A	B	C	D = B - C, if any	E = C - B, if any
Louisiana (M)	$43.01	$130.97		$87.96
Maine (C)		$32.94		$32.94
Maryland (C)		$162.44		$162.44
Massachusetts (C)		$275.09		$275.09
Michigan (C)	$36.12	$182.46		$146.34
Minnesota (C)		$90.26		$90.26
Mississippi (S)		$116.76		$116.76
Missouri (M)	$4.39	$126.23		$121.84
Montana (S)	$14.02	$24.28		$10.25
Nebraska (M)		$35.51		$35.51
Nevada (S)	$89.65	$37.94	$51.70	
New Hampshire (C)	$14.86	$13.33	$1.53	
New Jersey (C)		$334.05		$334.05
New Mexico (M)	$78.21	$105.95		$27.74
New York (C)	$437.28	$412.08	$25.20	
North Carolina (C)	$9.02	$194.65		$185.64
North Dakota (C)	$0.70	$13.47		$12.77
Ohio (M)	$59.01	$228.80		$169.79
Oklahoma (M)	$32.00	$124.36		$92.36
Oregon (S)	$61.04	$105.17		$44.12
Pennsylvania (S)	$154.36	$230.08		$75.72
Rhode Island (C)		$77.02		$77.02
South Carolina (M)	$117.24	$120.86		$3.62
South Dakota (C)	$2.77	$13.95		$11.18
Tennessee (C)	$177.87	$66.38	$111.49	
Texas (S)	$1,012.72	$800.25	$212.47	
Utah (S)	$34.81	$56.09		$21.28
Vermont (S)	$9.80	$4.39	$5.41	
Virginia (C)	$65.92	$124.62		$58.70
Washington (S)	$144.59	$29.65	$114.93	
West Virginia (S)	$23.25	$41.32		$18.06
Wisconsin (M)		$101.63		$101.63
Wyoming (S)	$9.80	$9.08	$0.72	
TOTAL	$3,773.83	$7,614.31	$823.73	$4,664.21
Projected amount available from redistribution of unspent FY2005 funds				$108.2
Total projected state shortfalls if no FY2008 allotment (in millions)				**$4,556.0**

Source: Centers for Medicare and Medicaid Services (CMS) "FY07-08SF-Cht.xls," provided on September 14, 2007, based on states' projections of FY2007 and FY2008 SCHIP spending as of August 2007. SCHIP program types from Table 1 of CRS Report RL30473, *State Children's Health Insurance Program (SCHIP): A Brief Overview*, by Elicia J. Herz and Chris L. Peterson.

Notes: S — Separate child health program. M — Medicaid expansion program. C — Combination program.